

Department of Justice

Washington 20530

September 3, 1965

Mr. Robert H. Bahmer
Acting Archivist of the United States
National Archives and Records Service
Washington, D. C. 20408

Dear Mr. Bahmer:

This is in reply to your letter of August 2, 1965 wherein you relate the problem posed by the presence of non-security administrative markings on documents among the records in the National Archives. You point out that usually these markings were intended to be of short term validity, that they have no relation to the national security and that the release to the public of such documents would create the impression that provisions of Executive Orders were being disregarded. You also requested an expression of the views of the Attorney General as to the validity of such administrative markings when it appears that the contents of the documents do not meet the security classification criteria set forth in E.O. 10501. The Attorney General has asked me to reply to your letter.

The current classifying authorities for all documents originating in the Executive Branch of the Federal Government which contain national defense information are Executive Orders 10501, 10964, and the Atomic Energy Act of 1954 for "Restricted Data."

In accordance with Section 1 of E.O. 10501, "Official information which requires protection in the interests of national defense shall be limited to three categories of classification, which in descending order of importance shall carry one of the following designations, Top Secret, Secret, or Confidential. No other designation shall be used to classify defense information, including military information as requiring protection in the interest of national defense, except as expressly provided by statute."

In keeping with our responsibility to keep to a minimum the classification of documents concerning the activities of the Government and to make available to the public as much information as possible, the following guidelines are recommended:

- (1) All material turned over to the National Archives and Records Service will be considered available to the public unless it contains defense information subject to classification under the criteria of E.O. No. 10501 or unless it is required to be protected from public disclosure by statute (which fact should be noted by the transferring agency at the time the material is turned over to the Archives), or unless the transferring agency expressly requests that the material be withheld from public disclosure at the time it is turned over to the Archives, or unless restricted by the Archivist.
- (2) Material classified prior to November 3, 1953, including material designated as "Restricted" under E.O. No. 10290, shall, unless otherwise entitled to classification protection under the provisions of E.O. No. 10501, be entitled only to such protection from public disclosure as shall have been expressly requested at the time the material shall have been turned over to the Archives. Upon receipt of a request for disclosure to the public of any such classified material, or whenever the Archivist deems appropriate, the Archivist should review such material to ascertain whether it requires protection under the criteria prescribed by E.O. No. 10501. If he determines that the material is entitled to protection under that criteria, it should remain classified and should not be released. However, if in the opinion of the Archivist the material does not require protection under E.O. No. 10501, the Archivist should notify the agency involved of his determination and advise that agency that the classification indicia on that material will be cancelled and that the material will be considered unclassified and subject to disclosure to the public after a specified date unless the agency justifies the continued classification of the material or otherwise directs that it be withheld from the public.

Sincerely,

J. WALTER YEAGLEY
Assistant Attorney General